

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

SUPREME JUDICIAL COURT
NO.

APPEALS COURT
NO. 2017-P-1226

COMMONWEALTH

V.

JOSE A. MARTINEZ

APPLICATION FOR DIRECT APPELLATE REVIEW

The defendant, Jose A. Martinez, applies for direct appellate review pursuant to Mass. R.A.P. 11, as amended, 437 Mass. 1602 (2002). The grounds for this motion are set forth in the accompanying memorandum.

JOSE A. MARTINEZ

By his attorneys,

/s/ Nancy J. Caplan
NANCY J. CAPLAN
BBO #072750

/s/ Benjamin H. Keehn
BENJAMIN H. KEEHN
BBO #542006
COMMITTEE FOR PUBLIC COUNSEL SERVICES
Public Defender Division
298 Howard Street, Suite 300
Framingham, MA 01702
(508) 620-0350
bkeehn@publiccounsel.net

Dated: January 11, 2018.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

SUPREME JUDICIAL COURT
NO.

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NO. 2017-P-1226

COMMONWEALTH

V.

JOSE A. MARTINEZ

**MEMORANDUM IN SUPPORT OF APPLICATION
FOR DIRECT APPELLATE REVIEW**

Jose A. Martinez applies for direct appellate review of questions reported by the Haverhill District Court (Abany, J.) pursuant to Mass. R. Crim. P. 34, as amended, 442 Mass. 1501 (2004), regarding the obligation of the Commonwealth to refund money exacted from Martinez "upon, and as a consequence of," convictions that have now been invalidated. See Nelson v. Colorado, 137 S. Ct. 1249, 1252 (2017).

**Statement of Prior Proceedings and
Statement of Facts Relevant to the Case**

This case is before the Appeals Court on Judge Abany's "Report of Questions of Law Without Decision Pursuant to Mass. R. Crim. P. 34" (App. 1-7).^{1/}

^{1/}The appendix to this application is cited by page number as "(App. 1-7)", and is reproduced, post.

On March 2, 2010, Martinez pleaded guilty (before Dowling, J.) to a complaint charging possession of a class A substance with intent to distribute, G.L. c.94C, §32(a) (count 4); possession of a class B substance with intent to distribute, G.L. c.94C, §32A(a) (count 5); and possession of a class C substance with intent to distribute, G.L. c.94C, §32B(a) (count 6) (App. 1, 10).^{2/} He was sentenced to concurrent terms of one year in the house of correction (suspended), put on probation for two years, and ordered to pay a ninety-dollar victim-witness assessment, sixty-five dollars per month in probation supervision fees, and \$1,000 in restitution to the Haverhill police department (App. 1, 10, 12).^{3/ 4/}

On April 19, 2017, in accord with the so-called "Bridgeman II"

^{2/}The defendant also pleaded guilty to unlicensed operation of a motor vehicle, G.L. c. 90, §19 (count 2) (App. 1, 9). This conviction remains intact (App. 2, 11).

^{3/}As the report notes (App. 6), the record contains no information indicating that the defendant's conduct caused economic loss to the Haverhill police department. See Commonwealth v. Henry, 475 Mass. 117, 120 (2016) ("A judge may order a defendant to pay restitution to the victim as a condition of probation provided that the '[r]estitution is limited to economic losses caused by the defendant's conduct and documented by the victim'"), quoting Commonwealth v. McIntyre, 436 Mass. 829, 833–834 (2002).

^{4/}Martinez was also ordered to forfeit "all monies taken" from him at arrest (App. 2, 10). This case does not present any question as to whether this money is refundable. In Commonwealth v. Green, 2017-P-1564, the Framingham District Court (Cunis, J.) has reported questions in connection with a motion for the return of, inter alia, seized cash which the motion alleges was forfeited upon, and as a consequence of, the defendant's subsequently-invalidated drug convictions.

protocol, Bridgeman v. District Attorney for the Suffolk Dist., 476 Mass. 298, 327-332 (2017), a single justice of the Supreme Judicial Court entered a declaratory judgment pursuant to which the above-identified drug convictions were vacated and dismissed with prejudice (App. 2, 11). See Bridgeman v. District Attorney for the Suffolk Dist., SJ-2014-0005 (Gaziano, J.) (Apr. 19, 2017 & June 1, 2017) (paper nos. 204 & 227) (App. 15-19).

On June 6, 2017, Martinez received a letter from the Supreme Judicial Court notifying him that the convictions had been vacated and dismissed with prejudice (App. 2). On June 12, 2017, Martinez appeared before Judge Abany, pro se, with a motion captioned "Motion for Restitution" alleging that he "had to pay almost three thousand dollars in court costs and supervision fees for this case," and requesting an order that the Commonwealth "pay [him] back . . . the money [he] paid to the Court" (App. 2, 13-14).

The instant report was issued on August 22, 2017 (App. 7, 11). With respect to victim-witness assessments, see G.L. c.258B, §8, the report states that "the paper court docket reflects payment on April 21, 2010, of the [ninety dollar] victim witness fee" (App. 2, 10). With respect to probation supervision fees, see G.L. c.276, §87A, the report states that "the MassCourts docket appears to reflect payment of \$1,560 towards [such] assessments" (App. 3). With respect to restitution, the report

states that Martinez "showed [Judge Abany] a receipt for his restitution payment of \$1,000 to the Haverhill [p]olice [d]epartment" (App. 2), but that such payment is not reflected "on either the paper docket or the MassCourts docket" (App. 4). "However, there is a MassCourts docket entry on May 5, 2016, that states that the 'case was automatically closed and disposed on 5/5/16 per AODC request,' citing as one of the reasons that there was 'no money outstanding'" (App. 4).^{5/}

The report was entered in the Appeals Court on September 19, 2017.

Statement of Issues of Law
Raised by the Case

When a conviction is invalidated by a reviewing court and no further prosecution will occur, does due process oblige the Commonwealth to refund money exacted from the defendant upon, and as a consequence of, the conviction? If so, what showing is required for an order for the return of such exactions to enter, and to whom should the order be directed?

^{5/}Undersigned counsel have obtained a copy of the receipt for payment of restitution which Martinez showed to Judge Abany when he appeared pro se in Haverhill District Court on June 12, 2017, and will seek to expand the record to include it. See also G.L. c. 276, §92 (permitting restitution to be paid to probation officer, "who shall give receipts for and keep record of all payments made to him, pay the money to the person injured and keep his receipt therefor, and notify the clerk of the court whenever the full amount of the money is received or paid in accordance with such order or with any modification thereof").

ARGUMENT

A. Under Nelson v. Colorado, the Commonwealth must refund money exacted from Martinez upon, and as a consequence of, his now-invalidated convictions.

In Nelson v. Colorado, the Supreme Court asked whether, after a conviction is invalidated and no retrial will occur, the State is obliged to refund money exacted from the defendant "upon, and as a consequence of, the conviction." 137 S. Ct. at 1252. "Our answer is yes." Ibid. The invalidation of a conviction — whether by the trial court or an appellate court, see id. at 1256 — "restore[s]" the presumption of innocence. Id. at 1255, citing Johnson v. Mississippi, 486 U.S. 578, 585 (1988) (following reversal on appeal, "unless and until [the defendant] should be retried, he must be presumed innocent of that charge"). See Commonwealth v. Russell, 470 Mass. 464, 474 (2015) (describing presumption of innocence as "that bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law'"), quoting from Coffin v. United States, 156 U.S. 432, 453 (1895). Restoration of the presumption of innocence requires that money taken from the defendant upon and as a consequence of a subsequently-invalidated conviction be refunded, for a State "may not presume a person, adjudged guilty of no crime, nonetheless guilty enough for monetary exactions." Nelson, 137 S. Ct. at 1256 (emphasis in original). In such

circumstances, each of the three "familiar procedural due process" considerations described by the Mathews v. Eldridge balancing test — (A) the private interest affected; (B) the risk of erroneous deprivation of that interest through the process used; and (C) the governmental interest at stake — "weigh decisively" in favor of recoupment. Id. at 1255, citing Mathews v. Eldridge, 424 U.S. 319 (1976).

Here, the convictions used to exact victim-witness assessments, probation supervision fees, and restitution from Martinez have been vacated and dismissed with prejudice. Martinez is innocent of these charges in the eyes of the law. As to the first Mathews v. Eldridge factor, the defendant's interest in recovering his money is "obvious." 137 S. Ct. at 1255. Second, the risk that Martinez will be erroneously deprived of his property if his motion for recoupment is denied is "unacceptable." Id. at 1257. Finally, the Commonwealth has "no interest" in withholding from Martinez money to which it now has "zero claim of right." Ibid. Accordingly, due process, as guaranteed by the Fourteenth Amendment to the United States Constitution, obliges the Commonwealth to refund the money in question.

B. Commonwealth v. Martin does not address the due process issues presented by the instant report.

In an opinion issued five months before the Supreme Court decided Nelson, this Court held that a defendant had no statutory right

to recoup victim-witness assessments or probation supervision fees exacted on the basis of a conviction later vacated and not proessed after the trial court allowed a motion to withdraw the defendant's guilty plea. Commonwealth v. Martin, 476 Mass. 72 (2016). The issue in Martin was simply "one of statutory construction," id. at 75, and the Court affirmed the denial of the defendant's motion for return of property on the basis of the "plain language" of the statutes in question. See id. at 74-76 (G.L. c.258, §8, which provides that victim-witness assessment "shall be refunded" where conviction is "subsequently overturned on appeal," conferred no right of recoupment for Martin, because a conviction vacated following allowance of a motion to withdraw a guilty plea has not been "overturned on appeal"); id. at 77 (defendant has no statutory right to refund of probation supervision fees exacted pursuant to G.L. c.276, §87A, because statute "is silent as to a defendant's entitlement to the return of probation fees after a conviction is vacated").

Colorado's recoupment scheme ran afoul of the Fourteenth Amendment because it created an "unacceptable risk" of an erroneous deprivation of defendants' property. 137 S. Ct. at 1257. "To comport with due process, a State may not impose anything more than minimal procedures on the refund of exactions dependent upon a conviction subsequently invalidated." Id. at 1258. Accordingly, to whatever extent

Martin may be read as endorsing a statutory regime that forecloses a defendant from recouping monetary exactions effected upon, and as a consequence of, a subsequently-invalidated conviction, the decision cannot be squared with Nelson.

**STATEMENT OF REASONS WHY
DIRECT APPELLATE REVIEW IS APPROPRIATE**

The record in this case reveals monetary exactions totaling \$2,650 to which Martinez has, at the very least, a prima facie claim under Nelson.^{6/} Yet there is an obvious tension between Nelson (which underscores the constitutional requirement that criminal defendants whose convictions have been invalidated are afforded a simple process by which they may get "their money back," 137 S. Ct. at 1257) and Martin (which forecloses such relief based on the statutory language, or lack thereof, pertaining to the monetary exactions there in issue).

As an initial matter, the report in this case raises the narrow question of whether, following Martin, a conviction that has been vacated and dismissed with prejudice in accord with the declaratory judgments issued by Justice Gaziano in Bridgeman II has been "overturned on appeal," such that there exists a statutory right to a refund of the ninety dollar victim-witness assessment imposed pursuant to G.L. c.258, §8 (App. 5).

^{6/}Ninety dollars (victim-witness assessment), plus \$1,560 (probation supervision fees), plus \$1,000 (restitution) equals \$2,650.

But what if no statutory authority for recoupment exists, as is the case with respect to both probation supervision fees, see Martin, 476 Mass. at 77, and restitution payments (App. 7)? In this regard, the report raises a much broader question, viz., regardless of the statutory specifics, does a Massachusetts defendant whose conviction has been invalidated have a due process right under Nelson to the return of victim-witness assessments, probation supervision fees, restitution, fines, surfinest, court costs — or any other "exaction[] dependent on a conviction" (App. 4), quoting Nelson, 136 S. Ct. at 1258, with which a defendant may be saddled? If the answer is yes, the report then raises additional questions of first impression, "including what showing a defendant must make to be entitled to a refund and from what source refunds are to be made" (App. 7).

As Judge Abany aptly notes, these issues may have a "significant impact on the Commonwealth" in light of the number of convictions invalidated by dint of Bridgeman II (App. 7). Accordingly, this case raises questions of public interest which "should be submitted for final determination to the Supreme Judicial Court." Mass. R.A.P. 11(a), as amended, 378 Mass. 938 (1979).

CONCLUSION

For the above-stated reasons, the Court should grant the application for direct appellate review.

Respectfully submitted,

JOSE A. MARTINEZ
By his attorneys,

/s/ Nancy J. Caplan
NANCY J. CAPLAN
BBO #072750

/s/ Benjamin H. Keehn
BENJAMIN H. KEEHN
BBO #542006
COMMITTEE FOR PUBLIC COUNSEL SERVICES
Public Defender Division
298 Howard Street, Suite 300
Framingham, MA 01702
(508) 620-0350
bkeehn@publiccounsel.net

Dated: January 11, 2018.

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

DISTRICT COURT DEPARTMENT
HAVERHILL DIVISION
DOCKET NO. 0938CR1515

COMMONWEALTH OF MASSACHUSETTS

v.

JOSE A. MARTINEZ

**REPORT OF QUESTIONS OF LAW WITHOUT DECISION
TO THE APPEALS COURT PURSUANT TO MASS. R. CRIM. P. 34**

BACKGROUND AND FINDINGS OF FACT

On March 2, 2010, the defendant, Jose Martinez, pleaded guilty to possession with intent to distribute three types of controlled substances (Class A, Class B, and Class C), and unlicensed operation of a motor vehicle. Docket No. 0938CR1515. Mr. Martinez was represented by counsel at the time.

On the three drug convictions, Mr. Martinez was sentenced to concurrent sentences of one year in the House of Correction, suspended for two years (March 2, 2012). For the unlicensed operation conviction, the defendant was ordered to pay a \$100 fine. Mr. Martinez was ordered to pay \$65 per month while on probation (this amount is required by G.L. c. 276, § 87A which mandates collection of a probation service fee of \$60 per month and a victim services surcharge of \$5 per month), a victim witness fee of \$90 (G.L. c. 258B, § 8), and restitution to the Haverhill Police Department in the amount of \$1,000. The

defendant was also ordered to forfeit any monies found on his person at the time of the arrest.

Seven years later, on April 19, 2017, the single justice of the Supreme Judicial Court issued a global order in Docket No. SJ-2014-0005 as a result of Annie Dookhan and the Hinton drug lab scandal (hereinafter, the “global Dookhan order”). Pursuant to that order, the defendant’s three drug convictions were vacated and dismissed with prejudice.¹ On June 6, 2017, Mr. Martinez received a letter notifying him of this order.

On June 12, 2017, Mr. Martinez appeared in this court *pro se* and filed a “motion for restitution” seeking “restitution to me for court costs and supervision fees,” and claiming that he paid “almost three thousand dollars in court costs and supervision fees.” Although Mr. Martinez does not mention “restitution” in his motion, he did show the court a receipt for his restitution payment of \$1,000 to the Haverhill Police Department.

On review of the court’s file, the paper court docket reflects payment on April 21, 2010 of the \$90 victim witness fee.²

The paper docket does not reflect any payments of the \$65 per month assessment. However, the MassCourts docket states that:

As of the 05/13/2011, \$120 was assessed and \$70.00 has been paid to date, leaving a “remaining balance” of \$50. Refer to PRA

¹ This order did not affect the unlicensed operation conviction.

² That same day, the defendant also paid the \$100 fine imposed on the unlicensed operation conviction. However, where the conviction of unlicensed operation was not vacated, that \$100 fine is not subject to a refund.

account number 101083 for detailed accounting information.³ The PRA Offense code for this transaction was VSS.⁴

As of the 5/13/2011, \$1,440 was assessed and \$840 has been paid to date, leaving a “remaining balance” of \$600. Refer to PRA account number 101082 for detailed accounting information. The PRA Offense code for this transaction was PSF.⁵

Subsequent to May 13, 2011, the MassCourts docket notes the following receipts:

Date	Receipt #	Fee Type	Amount
5/27/11	859	PSF	\$65.00
7/1/11	1999	PSF	\$65.00
8/1/11	2843	PSF	\$65.00
9/6/11	4037	PSF	\$65.00
12/14/11	5296	PSF	\$65.00
12/7/11	6777	PSF	\$325.00
TOTAL		PSF	\$650.00

As such, the MassCourts docket appears to reflect payment of \$1,560 towards assessments imposed pursuant to G.L. c. 276, § 87A.

³ It is my understanding that PRA, which was the program utilized by the probation service to track the collection of monies, is no longer accessible now that the system has migrated to MassCourts.

⁴ I infer that “VSS” stands for “victim services surcharge,” the \$5 per month assessment required by G.L. c. 276, § 87A.

⁵ I infer that “PSF” stands for “probation service fee,” the \$60 assessment required by G.L. c. 276, § 87A.

There is no entry on either the paper docket or the MassCourts docket regarding payment of the \$1,000 restitution payment to the Haverhill Police Department. However, there is a MassCourts docket entry on May 5, 2016 that states that the “case was automatically closed and disposed on 5/5/2016 per AODC request,” citing as one of the reasons that there was “no money outstanding.”⁶

DISCUSSION AND REPORTED QUESTIONS

The defendant’s motion cites to no case law or statutory authority for his refund request. However, victim witness fees imposed pursuant to G.L. c. 276, § 87A, probation assessments pursuant to G.L. c. 276, § 87A, and restitution are “exactions dependent upon a conviction.” Nelson v. Colorado, 137 S. Ct. 1249, 1258 (2017).

Victim Witness Fee

The paper docket reflects payment of the \$90 victim witness fee. This fee was imposed on a drug conviction that was vacated and dismissed with prejudice pursuant to the global Dookhan order.

The statute mandating the imposition of a victim witness fee provides that “[t]he assessment from any conviction or adjudication of delinquency which is subsequently overturned on appeal shall be refunded by the court to the person whose conviction or adjudication of delinquency is overturned. Said court shall deduct such funds from the assessments transmitted to the state treasurer.” G.L.

⁶ The last entry on the paper docket is a stipulation to a probation violation on December 7, 2011, which resulted in an order for probation to stand through March 2, 2012.

c. 258B, § 8. The Supreme Judicial Court has held that this language only applies to convictions or admissions to sufficient facts “overturned on appeal,” and not where the trial court grants postconviction relief pursuant to Mass. R. Crim. P. 30. Commonwealth v. Martin, 476 Mass. 72, 75-76 (2016).

1. Does the refund language in G.L. c. 258B, § 8 apply to convictions vacated pursuant to the global Dookhan order? If the statute does apply, what is the showing a defendant must make to be entitled to a refund of a victim witness fee imposed pursuant to G.L. c. 258B, § 8, and, if a defendant makes such a showing, from what source should this payment be refunded?
2. If G.L. c. 258B, § 8 does not apply in these circumstances, is refund of a victim witness fee required pursuant to Nelson v. Colorado, 137 S. Ct. 1249 (2017)? If Nelson does require refunding victim witness fees, what is the showing a defendant must make to be entitled to a refund of such fees, and from what source should this payment be refunded?
3. If a refund is required either pursuant to the statute or pursuant to Nelson, can the court limit the refund to \$40 by redistributing \$50 of the victim witness fee to the surviving judgment on the misdemeanor offense of unlicensed operation in violation of G.L. c. 90, § 10? G.L. c. 258B, § 8 (\$90 victim witness assessment for felonies; \$50 victim witness assessment for misdemeanors); Commonwealth v. Zawatsky, 41 Mass. App. Ct. 392, 401 (1996) (remanding to discretion of trial

judge whether \$600 of victim witness assessment lost in connection with the vacated civil rights counts should be distributed among the surviving judgments of conviction).

Probation Service Fee and Victim Services Surcharge

Although the paper docket does not reflect the collection of the assessments pursuant to G.L. c. 287, § 87A, the MassCourts docket appears to indicate that a total of \$1,560 was collected.⁷ The assessments pursuant to G.L. c. 287, § 87A were imposed on the drug convictions that were vacated and dismissed with prejudice pursuant to the global Dookhan order.

There is no statute authorizing the refund of probation service fees and victim service surcharges imposed pursuant to G.L. c. 287, § 87A.

4. Does Nelson v. Colorado, 137 S. Ct. 1249 (2017) require refunding payments assessed pursuant to G.L. c. 276, § 87A? If so, what is the showing a defendant must make to be entitled to a refund of such payments, and from what source should this payment be refunded?
5. What verification is needed to determine the amount to be refunded?

Restitution

The defendant provided the Court with a receipt for the \$1,000 restitution payment to the Haverhill Police Department. The record does not contain any information regarding the basis of the restitution order. There is no specific court

⁷ The collection of monies was transferred from the probation department, which utilized a system called “PRA,” to the clerk’s office when MassCourts came online. As a result, money that had been collected through PRA would be noted on the MassCourts docket as a single entry, with subsequent payments noted in MassCourts. The PRA system is no longer accessible.

docket entry confirming payment other than the docket entry automatically closing the case on May 5, 2016, that notes “no money outstanding.”

There is no statute authorizing the refund of restitution payments.

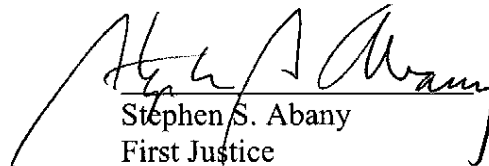
6. Does Nelson v. Colorado, 137 S. Ct. 1249 (2017) require refunding restitution? If so, what is the showing a defendant must make to be entitled to a refund of this payment, and from what source should restitution payments be refunded?
7. What verification is needed to determine the amount to be refunded?

ORDER

The defendant’s “motion for restitution” raises several issues of first impression, including what showing a defendant must make to be entitled to a refund and from what source refunds are to be made. As the resolution of the defendant’s motion could have a significant impact on the Commonwealth where the defendant’s convictions have been vacated and dismissed with prejudice as part of the global Dookhan order issued in SJ-2014-0005, in the exercise of my discretion, I report the foregoing questions of law to the Appeals Court pursuant to Mass. R. Crim. P. 34.

BY THE COURT:

Date: AUGUST 22, 2017


Stephen S. Abany
First Justice
Haverhill District Court



CRIMINAL DOCKET - OFFENSES		DEFENDANT NAME Jose Martinez		DOCKET NUMBER 0938CR001515	
COUNT / OFFENSE 1 STOP/YIELD, FAIL TO * c89 §9		DISPOSITION DATE AND JUDGE 3/2/10 Dowling			
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70C)		FINE/ASSESSMENT HEAD INJURY ASMT RESTITUTION		COSTS V/W ASSESSMENT BATTERER'S FEE OTHER	
FINDING <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
COUNT / OFFENSE 2 UNLICENSED OPERATION OF MV c90 §10		DISPOSITION DATE AND JUDGE 3-2-10 Dowling			
DISPOSITION METHOD <input checked="" type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT 100 HEAD INJURY ASMT RESTITUTION		COSTS V/W ASSESSMENT BATTERER'S FEE OTHER	
FINDING <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
COUNT / OFFENSE 3 DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J		DISPOSITION DATE AND JUDGE 3-2-10 Dowling			
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input checked="" type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT RESTITUTION		COSTS V/W ASSESSMENT BATTERER'S FEE OTHER	
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			



CRIMINAL DOCKET - OFFENSES		DEFENDANT NAME Jose Martinez		DOCKET NUMBER 0938CR001515	
COUNT / OFFENSE 4 DRUG, POSSESS TO DISTRIB CLASS A c94C §32(a)		DISPOSITION DATE AND JUDGE 3/2/10 D. Daley			
DISPOSITION METHOD <input checked="" type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT 1,000		COSTS 90 OUI \$24D FEE 1817800004/21 BATTERER'S FEE 350 OTHER 100	
FINDING <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by: 1 year H/C STP 3.2.12 65 PS / 1000 fine 2600			
FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE 3/2/12		DATE	
COUNT / OFFENSE 5 DRUG, POSSESS TO DISTRIB CLASS B c94C §32A(a)		DISPOSITION DATE AND JUDGE 3/2/10 D. Daley			
DISPOSITION METHOD <input checked="" type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT		COSTS OUI \$24D FEE BATTERER'S FEE OTHER	
FINDING <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by: 1 year H/C STP 3.2.12 conceded 4/4			
FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE 3/2/12		DATE	
COUNT / OFFENSE 6 DRUG, POSSESS TO DISTRIB CLASS C c94C §32B(a)		DISPOSITION DATE AND JUDGE 3/2/10 D. Daley			
DISPOSITION METHOD <input checked="" type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT		COSTS OUI \$24D FEE BATTERER'S FEE OTHER	
FINDING <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by: 1 year H/C STP 3.2.12 conceded 4/4			
FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE 3/2/12		DATE	

[illegible]

**ORDER OF PROBATION CONDITIONS
UPON FINDING OF GUILTY OR SUFFICIENT FACTS**

☒ RISK/NEED OR OUI SUPERVISION
☐ ADMINISTRATIVE SUPERVISION

DOCKET NO(s). IN WHICH PROBATION WAS ORDERED

0938CR001515

PROBATIONER'S NAME & ADDRESS

Jose Martinez
169 Saratoga #2
Lawrence, MA 01841 978 686 6879

DISPOSITION

9-1yr Hd SSIPR
312112

**Trial Court of Massachusetts
District Court Department**



Haverhill District Court
JP Ginty Blvd P O Box 1389
Haverhill Ma 01831

TO THE ABOVE-NAMED PROBATIONER: You are hereby placed on probation by this Court. Unless you are excused by your probation officer, you must appear in court on the probation end date indicated, at which time a report on your probation progress will be made. If you fail to appear on that date or any other date required, a warrant may be issued for your arrest.

PROBATION START DATE

3-2-10

PROBATION END DATE

3-2-12

GENERAL CONDITIONS OF PROBATION (You must comply with Items 1-6 unless struck out by judge.)

- Obey all court orders and all local, state and federal laws, including any support order, as defined in G.L. c. 119A, § 1A.
- Report to your probation officer at such times and places as he or she requires, and make no false statements to your probation officer.
- Notify your probation officer within 48 hours if you change residence or employment.
- Pay any ordered Probation Supervision Fees monthly or, if permitted by the court, perform community service monthly.
- Submit a DNA sample to the State Police, if required to do so by law. Register with the Sex Offender Registry, if required to do so by law.
- Sign all releases necessary for supervision and verification of compliance.

(You must also comply with Items 7-9 if "RISK/NEED OR OUI SUPERVISION" is checked above.)

- Allow the probation officer to visit you in your home with or without notice.
- Report to your probation officer within 48 hours after you are released from any incarceration.
- Do not leave Massachusetts unless you get the express permission of your probation officer and sign a waiver of rendition.

SPECIAL CONDITIONS OF PROBATION (You must also comply with all items checked below and all payments ordered.)

- ☐ **EMPLOYMENT/SCHOOL:** Remain employed or make reasonable efforts to obtain employment or attend school, and provide verification as required.
- ☐ **WORK/SCHOOL VISITS:** Allow the probation officer to visit your place of employment or school with or without notice.
- ☐ **SUBSTANCE ABUSE EVALUATION/TREATMENT:** As directed by the probation officer, and subject to review by a judge on request, submit to and successfully complete any substance abuse evaluation, treatment and aftercare at a non-residential program. ☐ and/or a residential program.
- ☐ **DRUG/ALCOHOL TESTING:** Remain ☐ drug free ☐ alcohol free. Submit to random testing as required.
- ☐ **MENTAL HEALTH EVALUATION/TREATMENT:** ☐ Submit to evaluation ☐ Complete treatment and take medications as prescribed
- ☐ **SPECIFIC PROGRAMS:** Complete the following program(s), including any aftercare: ☐ Driver Alcohol Education (G. L. c. 90, § 24D)
☐ 14-Day Residential Driver Alcohol Education ☐ Certified Batterer's Intervention ☐ Anger Management Treatment ☐ Other:
- ☐ **HAVE NO CONTACT WITH** ☐ and **STAY** (distance) _____ **AWAY FROM:** (name(s)) _____
- ☐ **COMMUNITY SERVICE:** Perform _____ hours of community service as directed by probation.
- ☐ **HOME CONFINEMENT:** Submit to home confinement and electronic monitoring until _____ pursuant to the schedule approved by the Court.
- ☒ **OTHER CONDITIONS:**
DNA Report to Prob - 3-10-10 of 100mm

20. Make all **FINANCIAL PAYMENTS** listed below, as directed by probation.

JUDGE'S SIGNATURE

TYPE	AMOUNT	DUE DATE AND/OR TERMS
Counsel Fee/Contribution	\$ Private	
Default Warrant Fee	\$	
Default Warrant Arrest Fee	\$	
Court Costs	\$	
Fine/Surfine/Civil Assessment	\$ 100.00	
Restitution	\$ 1000.00	315110
Victim/Witness Assessment	\$ 90.00	
Probation Fee & Surcharge	\$ 65.00 month	
OUI § 24D State Fee	\$	
OUI Victims Assessment	\$	
Head Injury Assessment/Surfine	\$	
Drug Analysis Fee	\$	
Batterer's Program Assessment	\$	

SIGNATURE OF JUDGE

× [Signature] DATE: 3/2/10

INTERPRETER'S SIGNATURE

SIGNATURE OF INTERPRETER, if any: I have translated the terms of this Order and the acknowledgment set forth above to the probationer prior to his/her signature.

× [Signature] DATE:

PROBATIONER'S ACKNOWLEDGMENT OF ORDER

SIGNATURE OF PROBATIONER: I have read and understand the above conditions of probation and I agree to observe them. I understand that if I violate any such condition it may result in my arrest, revocation of probation, the entry of a guilty finding (if not already entered), and the imposition or execution of sentence. I have received a copy of this Order.

× [Signature] DATE: 3-2-10

PROBATION OFFICER'S SIGNATURE

SIGNATURE OF WITNESSING PROBATION OFFICER

× [Signature] DATE: 3-2-10

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

HAVERHILL DISTRICT COURT
DOCKET No. 0938CR1515

COMMONWEALTH

)

)

v.

)

)

JOSE A. MARTINEZ

)

Defendant

)

MOTION FOR RESTITUTION

Now comes the Defendant, pro se, and respectfully requests that this Honorable Court order the Commonwealth of Massachusetts to pay restitution to me for court costs and supervision fees, which I paid, in connection with the above-described complaint.

On June 6, 2017 the Honorable Frank M. Gaziano, Associate Justice of the Supreme Judicial Court, sent me a letter, which I have attached hereto as Exhibit A. In the letter, Justice Gaziano revealed to me that my conviction in this case arose as a result of the corruption of Annie Dookhan from the Jamaica Plain crime lab.

If I only knew that the Commonwealth secured my conviction through evidence furnished by a corrupt government agent, I would never have plead guilty and my life would have been a lot different.

Because of Annie Dookhan's corrupt actions, I have spent the last seven years as a convicted felon. Because

of this conviction my employment prospects have been limited.

Additionally, I had to pay almost three thousand dollars in court costs and supervision fees for this case.

Because the Commonwealth harmed me so much by convicting me with corrupt and tainted evidence, I am asking the Court to order the Commonwealth to at least pay me back for the money I paid to the Court. Although I certainly could ask for more, given the egregious prosecutorial misconduct in this case, I would ask that the Court at least make the Government pay me back for the costs and fees I paid to Court in my case.

Respectfully submitted,
Jose A. Martinez, pro se

Dated June 9, 2017

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2014-0005

SUFFOLK SUPERIOR COURT
NO.SUCR2005-10537;
BOSTON MUNICIPAL COURT
NO.0501-CR-0142;
ESSEX SUPERIOR COURT
NO.ESCR2007-1535

KEVIN BRIDGEMAN & others¹

vs.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT & others²

DECLARATORY JUDGMENT

This matter came before the Court, Gaziano, J., on the respondent District Attorneys' letters filed on April 18, 2017.

Pursuant to Commonwealth v. Bridgeman, 476 Mass. 298, 327 (2017), which provides that of the three letters to be filed by each district attorney, "[t]he second letter shall identify all of the drug convictions on the list that the district attorney moves to vacate and dismiss with prejudice as a result of his or her individualized review[,] " it is ORDERED that the convictions of G.

¹ Yasir Creach and Miguel Cuevas; Committee for Public Counsel Services (CPCS), intervener.

² District Attorney for the Essex District, District Attorney for the Bristol District, District Attorney for the Cape and Islands District, District Attorney for the Middlesex District, District Attorney for the Norfolk District, and District Attorney for the Plymouth District.

L. c. 94C offenses that have been identified by the district attorneys in their respective second letters, as reproduced in Attachment A to this order, be and hereby are **VACATED AND DISMISSED WITH PREJUDICE**, and any outstanding warrants associated with those convictions are recalled.

It is **FURTHER ORDERED** that for good cause shown, Attachment A shall be **IMPOUNDED** until further order of this court.

By the Court,


Frank M. Gaziano
Associate Justice

Dated: 4.19.17

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2014-0005

SUFFOLK SUPERIOR COURT
NO.SUCR2005-10537;
BOSTON MUNICIPAL COURT
NO.0501-CR-0142;
ESSEX SUPERIOR COURT
NO.ESCR2007-1535

KEVIN BRIDGEMAN & others¹

vs.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT & others²

AMENDED DECLARATORY JUDGMENT

This matter came before the court, Gaziano, J., on the respondent District Attorneys' second letters filed on April 18, 2017, and on supplements to those second letters filed subsequently by the District Attorneys for the Middlesex District and Bristol District. This matter also came before the court on the recommendation of the Special Master concerning issues relating to the implementation of this court's Declaratory Judgment entered April 19, 2017.

¹Yasir Creach and Miguel Cuevas; Committee for Public Counsel Services (CPCS), intervener.

²District Attorney for the Essex District, District Attorney for the Bristol District, District Attorney for the Cape and Islands District, District Attorney for the Middlesex District, District Attorney for the Norfolk District, and District Attorney for the Plymouth District.

Pursuant to Commonwealth v. Bridgeman, 476 Mass. 298, 327 (2017), it is ORDERED that the convictions and other dispositions (including continuances without a finding, nolle prosequis, and adjudications of delinquency)³ relating to G. L. c. 94C offenses that have been identified by the District Attorneys in their respective original second letters and supplemental second letters, as listed in Amended Attachment A to this Amended Declaratory Judgment, be and hereby are VACATED AND DISMISSED WITH PREJUDICE, and any outstanding warrants associated with those convictions and other dispositions are RECALLED.⁴

It is FURTHER ORDERED that for good cause shown, Amended Attachment A shall be IMPOUNDED until further order of this court.


It is FURTHER ORDERED that this Amended Declaratory Judgment and attachment shall supersede the Declaratory Judgment

³ Insofar as any of second letters and supplements to second letters filed by the District Attorneys may include any case or count in which a not guilty finding was entered on the docket, such case or count is expressly excluded from the scope of this amended declaratory judgment and the previous declaratory judgment dated April 19, 2017.

⁴ With respect to the G. L. c. 94C offenses that have been identified by the district attorneys in their respective second letters and supplemental second letters filed in this matter, if the record of any such offense so identified is presently sealed, a Clerk Magistrate or Assistant Clerk or any person working on behalf of a Clerk Magistrate or Assistant Clerk may open the sealed record to update the record of the relevant offense or offenses and thereafter immediately reseal the record.

and attachment entered in this matter on April 19, 2017.⁵

By the Court,


Frank M. Gaziano
Associate Justice

DATED: June 1, 2017

⁵ The court personnel implementing this amended declaratory judgment need not start afresh to the extent the work that they have already completed pursuant to the April 19, 2017 declaratory judgment is consistent with this amended declaratory judgment.

CERTIFICATE OF SERVICE

I certify that I served the foregoing Application for Direct Appellate Review, and Memorandum and Appendix in support thereof, by causing copies to be mailed, first-class postage pre-paid, and sent via electronic mail to the offices of:

ADA Ronald DeRosa
Essex County District Attorney's Office
10 Federal Street
Salem, MA 01970,

and

Sarah M. Joss
Deputy Legal Counsel
Massachusetts Department of Probation
One Ashburton Place, 4th Floor
Boston, MA 02108

/s/ Benjamin H. Keehn

Benjamin H. Keehn

BBO #542006

COMMITTEE FOR PUBLIC COUNSEL SERVICES

Public Defender Division

298 Howard Street, Suite 300

Framingham, MA 01702

(508) 620-0350

bkeehn@publiccounsel.net

Dated: January 11, 2018.